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July 2, 2012

## **Ex Parte Letter Via Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208**

Dear Ms. Dortch:

The Rural Broadband Alliance ("RBA") respectfully submits this ex parte letter in response to the June 13, 2012 Petition for Limited waiver filed by Bandwidth.com in CC Docket No. 99-200. The Bandwidth.com Petition is the most recent of several petitions filed by different entities seeking waiver of Section 52.15(g)(2)(i) of the Commission's rules that would enable non-telecommunications carriers to obtain numbering resources directly from the North American Numbering Administrator.<sup>1</sup>

The Commission's rules regarding the assignment of numbers are based on thorough and thoughtful policy considerations, and are the product of established and applicable rulemaking processes. The resulting rules were not adopted to foster the interests of one class of provider over another, or to promote the use of any one technology over others. The rules were adopted through the established rulemaking process in order to address consumer needs and protect the overall public interest.

In contrast, the pending waiver petitions reflect the business interests of individual companies that have a common objective: they seek rights to foster their business plans and concurrently seek freedom from all regulatory responsibilities adopted to protect consumers.

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<sup>1</sup> 47 C.F.R. § 52.15(g)(2)(i). Bandwidth.com notes at footnote 1 in its Petition, filed on June 13, 2012, the specific similar petitions filed by 15 other entities.

Specifically with respect to the pending waivers, the FCC rules provide that only authorized providers of telecommunications services may obtain the use of numbering resources directly. The petitioners seek the right to obtain numbering resources while maintaining their freedom from the responsibilities of serving the public that are required of authorized telecommunications services providers.

Collectively, the grant of the pending waivers would *de facto* revise the established regulatory policy and rules without following the established rulemaking process. In this instance, the grant of the waivers and the resulting effective policy change would remove a lynchpin of the telecommunications regulatory framework adopted to protect consumers and serve the public interest.

The RBA, a coalition of rural telecommunications service providers, submits this objection to the grant of the pending waivers not because RBA members have determined that the existing numbering administration rules should be maintained as is, or discarded in whole, or revised. RBA respectfully submits that the issues and rules associated with numbering resources should not be addressed on an ad hoc basis within the framework of waiver petitions, but as part of a comprehensive fact-based rulemaking process. RBA members urge the Commission not to once again succumb to the lure of moving forward in haste with a new program or policy without regard either for unintended consequences or the value of existing policies and rules that private interests would have the Commission abandon.

With respect to the pending waivers, the Commission has an established policy and associated rules to ensure that numbering resources are administered and used in a manner that protects consumers and serves the public interest. Accordingly, the Commission has determined that an applicant for numbering resources must demonstrate that it is an authorized provider of telecommunications services. Section 52.15(g)(2)(i) provides that “Applications for initial numbering resources shall include evidence that: (i) The applicant is authorized to provide service in the area for which the numbering resources are being requested.”

The waivers seek to abandon Section 52.15(g)(2)(i). The non-authorized providers seeking the waivers essentially want the rights associated with the status of an authorized provider while avoiding the responsibilities that go with those rights. Bandwidth.com, a state-certificated carrier, has filed its Petition only “to buffer itself against being placed in an unfair and competitively disadvantageous position.”<sup>2</sup> Essentially, Bandwidth.com understandably contends that if the Commission grants a waiver to Vonage and to other similarly situated non-carriers to enable them to obtain numbering resources without following established policy and rules, then Bandwidth.com must protect itself by obtaining the same rights in order “to compete on similar terms.”<sup>3</sup>

In fact, however, Bandwidth.com continues to oppose the multiple petitions for waiver of Section 52.15(g)(2)(i), and submits that its own petition is not “the proper path forward.” Instead, Bandwidth.com asserts, “Petitions for Waiver are an inappropriate means to address the

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<sup>2</sup> Bandwidth.com Petition, p. 2.

<sup>3</sup> *Id.*

relief requested by Vonage and others.”<sup>4</sup> The RBA agrees. The multiple waiver requests by non-carriers to obtain numbering resources without regard to the existing rules and policies reflect an attempt to use the waiver process to effectuate a change in the underlying policies.

The Bandwidth.com Petition highlights the unavoidable conclusion that the grant of any of the waivers would require a grant of the same relief to any and all parties in order to ensure that all parties compete pursuant to similar terms and conditions. Irrespective of whether or not there is merit to the contention that access to numbering resources should no longer be subject to Section 52.15(g)(2)(i), the consideration of that issue should take place in the proper forum: a rulemaking proceeding, and not the waiver requests of multiple parties.

The ramifications of the issues raised by the petitions to waive Section 52.15(g)(2)(i) and their impacts on consumers are extensive. As the Bandwidth.Com petition demonstrates, a waiver for an individual company or class of companies has far reaching consequences and suggests either: 1) that the grant of the waiver will lead to a change in the fundamental policy that Section 52.15(g)(2)(i) was adopted to advance; or 2) that the Commission will countenance a regulatory framework that enables service providers to avoid regulatory responsibilities simply by defining their own status as a carrier not subject to the established responsibilities.

RBA concurs with those parties that have set forth on the record in response to the waiver requests the plethora of fact-based and detailed issues that are associated with the relief sought by the waiver petitions.<sup>5</sup> As demonstrated in the NARUC Ex Parte, “[T]he relief requested by the carriers in this proceeding is broad and should be handled in the context of a rulemaking proceeding.”

The Petitioners and the parties supporting their waiver requests are apparently relying on the Commission to take a “ready, aim, fire” approach to an issue that warrants thorough fact-based consideration in a rulemaking process. Moreover, the lure of the “new” should not dictate that the Commission disregard the very consumer-oriented public interest policy considerations that underlie the very rule the Petitioners ask the Commission to waive. The RBA respectfully notes that the grant of the waiver is not needed for the Petitioners to obtain numbering resources. Nothing other than each Petitioner’s reluctance to accept the responsibilities of an authorized carrier prevents any of the Petitioners from obtaining numbering resources directly.

Bandwidth.com correctly notes that the grant of the waiver requests will lead the nation toward “an industry-wide race to the bottom as carriers and non-carriers alike scramble to self-define their regulatory status according to their needs.”<sup>6</sup> The moment has arrived for the current Commission to define itself. Depending on how the Commission acts in this proceeding and in

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<sup>4</sup> *Id.*

<sup>5</sup> See, Notice of Oral Ex Parte from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to FCC Secretary Marlene H. Dortch, CC Docket 99-200, June 1, 2012 (“NARUC Ex Parte”); and Ex Parte Notice from Michael R. Romano, Senior Vice President, National Telecommunications Cooperative Association, to FCC Secretary Marlene H. Dortch, CC Docket 99-200, May 31, 2012.

<sup>6</sup> Letter from Greg Rogers, Deputy General Counsel, Bandwidth.com, to FCC Secretary Marlene H. Dortch, CC Docket 99-200, May 31, 2012, p. 2.

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making strategic and critical adjustments in other proceedings where it has undertaken to set the course of the country's communications services in the 21<sup>st</sup> century, this Commission will either be remembered as the Commission that set the stage for America's race to the top or the Commission that was misled by private interests to set the nation on a race to the bottom.

Utilizing the waiver process to leap frog over the rulemaking process is not simply bad form – it is a bad practice that leads to bad rules, bad regulations and bad policy. Accordingly, the RBA respectfully asks the Commission to reject the waiver requests and initiate a comprehensive rulemaking to address the issues raised by the waiver requests.

I am filing this letter electronically with your office for inclusion in the record of each of the above-referenced proceedings pursuant to the Commission's Rules. If you have any questions, please do not hesitate to contact me at 202-333-1770.

Sincerely,

s/ Stephen G. Kraskin